



Via E-mail Only to SOTF@sfgov.org

Honorable Members of the Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102

May 21, 2019

Re: File No. 19047, Anonymous (c/o 72902-46637773@requests.muckrock.com) v. Office of the Mayor, Mayor London Breed, and Hank Heckel

Dear Honorable Members of the Sunshine Ordinance Task Force (“SOTF”):

This letter serves as the response of the Office of the Mayor, Mayor London Breed and Hank Heckel (collectively “Respondents”) to the complaint designated File No. 19047, filed by an Anonymous requestor using an email address affiliated with MuckRock.com. *See* Complaint Noticed to Respondents on May 14, 2019. The complaint alleges a violation of S.F. Administrative Code Section 67.25 “by failing to respond to a request for public records in a timely and/or complete manner.” Respondents respectfully submit that the Office of the Mayor has responded to Anonymous’s request in a timely and appropriate manner and has not violated the Sunshine Ordinance.

Background

On the afternoon of May 8, 2019, the Anonymous Complainant submitted an Immediate Disclosure Request to the Office of the Mayor seeking “an electronic copy, in the original electronic format, with all calendar item headers, email addresses, metadata, timestamps, attachments, appendices, exhibits, and inline images, except those explicitly exempted by the Ordinance, of the Mayor’s calendar, with all items, from April 28 to May 4, 2019 (inclusive).” *See* Anonymous E-mail sent at 2:09 PM, 5/8/19.

On the afternoon of May 9, 2019, the Office of the Mayor timely responded with a copy of the requested calendar entries containing the times of meetings and events, places of such meetings and events, names and information regarding attendees and a general statement of the issues discussed at a meeting or event, consistent with the “Prop G” calendar requirements. *See* Heckel E-mail sent at 4:13 PM, 5/9/19 and attached file; S. F. Admin Code § 67.29-5. The Office of the Mayor provided this information in a PDF format to avoid compromising the security and integrity of the record, citing to Cal. Gov. Code 6253.9 (f) as a basis. The calendar was provided in the Prop G format as required and no substantive information regarding the entries was withheld. Anonymous filed its complaint the next day seeking production of specific metadata and that the calendar be converted from Outlook into one or more formats other than PDF.

Argument

Respondents have provided the requested calendar entries with all substantive information required by Prop G and have not withheld the date, time, location, subject matter or required attendee information for any item. This information was provided in a PDF format which is nearly universally accessible, which safeguards against tampering with the record in its native format and which protects against a security breach of the system on which the record was created. Anonymous' complaint is focused on information which either a) does not exist or b) comprises non-substantive metadata such as security validation information, the disclosure of which could jeopardize the security and integrity of both the system on which the file was created and the overall City system in which such records may be maintained.

Anonymous complains that the Office of the Mayor has inappropriately withheld certain types of information in its response including 1) email addresses, 2) "actual names of attendees instead of group descriptions", 3) "the acceptance/rejection of individual attendees to the invite", 4) conference call numbers, and 5) "headers, metadata, timestamps, attachments, exhibits, and inline images". *See* Complaint Summary pp. 000009-000011.

Available Substantive Information Has Been Provided

As an initial matter, Items 1 and 3 above have not been withheld because they do not exist. The Prop G calendar maintained by the Office of the Mayor does not use the invite feature of the Outlook calendar to invite and record attendees. Accordingly there are no associated emails and no information concerning acceptance/rejection of individual attendees to provide. Regarding Item 3 above, the Office of the Mayor has provided the names and affiliations of individual attendees for meetings or events with ten or fewer attendees as required by the Prop G ordinance. (*See* S. F. Admin Code § 67.29-5 (b): "For meetings or events with ten or fewer attendees, the calendar shall also identify the individual(s) present and organization(s) represented at the meeting or event if known by the official"). The only events for which "group descriptions" were provided were events with greater than ten attendees. In addition, the date, time, location and subject matter information were provided in compliance with Prop G.

Regarding Item 4, no conference call numbers were recorded on the calendar because such information is not required under Prop G and provision of such numbers could jeopardize official, security-related, confidential, and/or privileged information which may be exchanged over the phone.

Metadata

Regarding the types of information included within Item 5 above, some of this information does not exist. For example, there are no attachments, exhibits or inline images (such as embedded images or hyperlinks) created and maintained for the calendar entries so there is no information to provide.

The remaining types of information identified – headers, metadata, and timestamps – can be broadly defined under the category of "metadata" and associated data. The term "metadata"

refers to electronic data embedded in a document about the document itself. The amount of metadata available for a particular file can vary greatly depending on the software used to create the file and the system on which it is maintained. The Office of the Mayor does not routinely maintain specific types of metadata or index them as records. Further, the Office of the Mayor and City departments generally do not search for and provide metadata in response to records requests. The current administration has not in the past provided metadata in response to a similar request. Searching through metadata is a highly technical and specialized effort, and the Office of the Mayor does not include staff with experience and expertise in using, maintaining or searching metadata.

Producing documents with metadata can subject the City to security risks and can lead to the inadvertent disclosure of privileged information. For example, certain types of metadata associated with Outlook files can include “headers” as requested by Anonymous that are lines of code information used for validation purposes to screen files from outside sources for viruses, malware and other cyber risks. Access to this data could provide information regarding the system used by the City to protect against phishing, hacking and other cyber-attacks. (For an illustration of the risks posed by such security breaches, see the attached New York Times article regarding the hacking and crippling of the City of Atlanta’s computer systems). Accordingly, the Public Records Act expressly does not require an agency to produce records in their electronic formats if it would jeopardize or compromise the security or integrity of the original records, or of any software in which they are maintained. *See* Cal. Govt. Code § 6253.9(f). The Office of the Mayor cited this provision in its response to Anonymous.

To safeguard the security of the City’s computer system, it is necessary to withhold metadata that describes unique identifiers for individual computer terminals and computer servers and associated security certificates and similar information. This information is highly sensitive, as disclosing it could allow a hacker to penetrate the system or enable a hacker to “spoof” emails and insert themselves into confidential and/or privileged discussions or send unauthorized emails on behalf of city officials. Thus, there is a substantial need for confidentiality that outweighs any interest the requester may have in accessing this information. *See* Cal. Evid. Code § 1040.

Metadata may include a wide variety of information that the Office of the Mayor has a right, and in some cases a legal duty, to withhold from public view. For example, metadata may be used to reveal the editing history of a privileged document or communications to or from or work product by members of the City Attorney’s Office which is exempt from disclosure under the attorney-client privilege and work product privilege. Cal. Gov’t Code § 6276.04; Cal. Evid. Code § 954; Cal. Code Civ. Proc. § 2018.030. Disclosing metadata could also in theory reveal the identity of a confidential whistleblower or protected health information. Cal. Evid. Code § 1041; Charter §§ C3.699-13(a), F1.107(c); C&GC Code §§ 4.120, 4.123; 45. C.F.R. §§ 164.500 et seq. Finally, there is the overarching risk that disclosure may reveal sensitive information about the operation of the City’s computer and communications system that a third party could use to hack into the system, or to otherwise undermine the integrity and security of the system.

Format of Records

In connection with their request for metadata, Anonymous has sought production of the requested records in one or more specific formats other than PDF. For example, Anonymous requests that the calendar be exported in the “.ics, iCalendar or vCard” format. None of these are the native format in which the calendar is maintained. As a practical matter, the calendar excerpts cannot be routinely provided in these formats without including associated metadata that should be withheld for the reasons discussed above.

Regarding the iCalendar format, conversion of the calendar to this format would simply create a “native” file of the whole calendar, as opposed to individual entries. The normal view of this format to the user also does not provide additional substantive information beyond what would be viewed in the standard Outlook view. Associated metadata would still have to be extracted from the server or the file by someone with the requisite technical expertise and should be withheld in any case, as noted above.

Regarding an .ics format, this would require exporting the file to a format that is not typically used or maintained. This also carries the same concerns regarding the technical steps of harvesting metadata and the risks associated with disclosing it.

Regarding Vcard, we have not seen an available method for saving or converting the calendar to this format that is readily accessible to the users of the system in the Office of the Mayor.

Anonymous’ position regarding these formats is also not supported by the Public Records Act and the Sunshine Ordinance. Contrary to Anonymous’s argument, Cal. Gov. Code 6253.9 (a), which the Office of the Mayor cited in providing the calendar entries as a PDF, does not dictate that we provide the requested files in one of the specific formats requested. Cal. Gov. Code 6253.9 (a)(1) states that the “[t]he agency shall make the information available in any electronic format in which it holds the information.” The Office of the Mayor does not “hold” the Prop G calendar in an iCalendar, .ics or Vcard format because, as noted above, the calendar is not maintained in any of these formats. Providing the calendar in such a format or indeed any format containing the headers and other metadata requested would require a conversion or export or some other transformative step. Cal. Gov. Code 6253.9 (a)(2) separately states the “agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies”. The Office of the Mayor does not use the requested formats to create copies of the Prop G calendar for its own use or to provide it to other agencies.

Similarly, 6253.9 (f) provides support for declining to produce a record in a particular format if disclosure in such format jeopardizes the security or integrity of the record or the system on which it is maintained: “Nothing in this section shall be construed to require the public agency to release an electronic record in the electronic form in which it is held by the agency if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.”

Further, the Sunshine Ordinance provides that “[t]o the extent that it is technologically and economically feasible, departments that use computer systems to collect and store public records shall program and design these systems to ensure convenient, efficient, and economical public access to records.” S.F. Admin Code 67.21-1(a). The Office of the Mayor has maintained the calendar entries sought and provided them in a PDF format that is convenient, efficient and economical to view. The formats sought by requestor are less universally accessible and carry risks with associated metadata. Further, nothing in the sections of the Sunshine Ordinance limiting or abrogating disclosure exceptions in the California Public Records Act overturns the specific protections of Cal Govt. Code 6253.9 (f) regarding data security. *See* S.F. Admin Code 67.24 (a) – (i).

Appropriateness of Response

Anonymous makes a secondary argument that the Office of the Mayor violated the Sunshine Ordinance by withholding information without citing a basis for doing so. As noted above, no substantive information was redacted or otherwise withheld from the Prop G calendar entries. Furthermore, regarding metadata, the Office of the Mayor noted that it was providing the information in PDF, as opposed to a native format, and specifically cited Cal Gov. Code 6253.9 (f) and its protection for the security and integrity of the record and the underlying system. Accordingly Respondents submit that Anonymous was provided with specific notice regarding the reasons for the format provided.

For all of the above reasons, the Office of the Mayor respectfully submits that it has provided a timely and appropriate response to Anonymous’s request and there has been no violation of the Sunshine Ordinance. The Office of the Mayor is available to work with Anonymous and SOTF to address further questions and concerns regarding the request.

Sincerely,

/s/ Hank Heckel

Hank Heckel
Compliance Officer
Office of the Mayor
City and County of San Francisco